IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.8894 of 2004

A.P. Arya ..Petitioner

vs

Union of India and ors...Respondents

Mr.S.V.Marne for petitioner

Mr. S.C Dhavan for respondents

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated l5.l2.2004

P.C:

Heard advocates.

l. By this petition the petitioner is seeking to quash and set aside the orders dated l5.l0.2003 and 23.5.2003 passed by the Central Administrative Tribunal, Mumbai Bench dismissing Original Application No.630 of 2002 and Review Petition No.l8 of 2004 respectively.

2. Mr. Marne, learned counsel appearing for the petitioner urged that the principal challenge in the Original Application was to the panel dated l5.7.2003 on the ground that the petitioner had been illegally failed in vivo voce. Apart from this the other issues such as amendment to the Constitution of India and the promotion of the

petitioner in l996 and l998 selections were also raised. However, the tribunal decided the O.A of the petitioner as if he was seeking promotion in pursuance of the selection held in l996 and l998 only. Mr. Marne urged that for this purpose the petitioner had filed Original Application No.77 of l999 which was allowed by the tribunal and the writ petition filed by the respondents against the said judgment is pending in this court. The tribunal while deciding the present O.A has taken into account only this aspect and has come to the conclusion that since the matter is pending before this court the relief sought in the O.A cannot be granted. Mr. Marne submitted that the prayer made by the petitioner for inclusion of his name in the panel dated l5.7.2003 was independent prayer which ought to have been decided by the tribunal. Mr. Marne submitted that a colleague of the petitioner named J.P.Shoke had filed Original Application No.556 of 2003 for identical relief which was allowed by the tribunal and a direction was issued therein that the name of Mr. Shoke be considered by a special D.P.C. The net result of the impugned order of the tribunal is that while Mr.Shoke will be reconsidered for promotion by a special DPC and promoted, if found suitable with effect from l5.7.2003, the petitioner will be considered only

for the future selection.

3. We are unable to accept the submission of Mr.Marne. We have gone through the judgment of the tribunal in Mr. Shoke's case which is annexed at Exh N to the petition. In that case the grievance of the applicant was that the name of the applicant i.e. Mr Shoke was not included in the Notification dated 30.6.2002 because of pending disciplinary action against him. It was pointed out that the disciplinary action which is pending relates to the misconduct of May l99l and that although chargesheet was issued in l999, disciplinary authority had passed final order dated l3.l.2003 exonerating the applicant but for some unknown reasons the disciplinary proceedings started in May l999 have not been brought to end. In the light of these facts the tribunal has directed in that case as follows:

> " The counsel for applicant has mentioned that the departmental action against the applicant started way back in May,l99l is stilling pending. We take a serious note of this fact and direct the respondent no.2 to ensure that final orders in the pending disciplinary proceedings are passed by the

concerned authority within a period of three months. After the completion of disciplinary proceedings, the DPC should consider the suitability of applicant for promotion to the level of Assistant Engineer Group B. The fact that six SC/ST vacancies are still vacant does not show a satisfactory management of the promotion policy until and unless there are some genuine difficulties which have not been brought on record.

l3. In view of the facts indicated above, this OA is partly allowed. Respondent no.2 is directed to ensure the completion of disciplinary proceedings within a period of four months. Thereafter, a special DPC should consider the case of applicant for promotion tot he level of Assistant Engineer (Group B)."

4. In the case of the present petitioner the facts are clearly distinguishable. The case of the petitioner was considered for 2003 selection and he was not found suitable and was not selected. When the petitioner was called to the 2003 selection and

he participated in the same, subsequently he cannot turn around and challenge the said selection. Moreover a direction has already been issued to the respondents to consider the case of the present petitioner for promotion if he was found otherwise eligible alongwith others. No further directions are therefore necessary to be issued in the present petition. Petition is accordingly dismissed.